March 11, 1999
L-99-5

TO : Penny J. Gillen
Hearings Officer

FROM : Steven A. Bartholow
General Counsel

SUBJECT : R.R.B. No. A-xxx-xx-xxxx - J.J. B.-K.

The attached is in response to your request dated November 6, 1998 as to whether the State of Wisconsin would recognize purported common-law marriages contracted during temporary stays in a state (in this case, Georgia) which recognizes common-law marriages.

FACTS

According to the file, the appellant has applied for the lump-sum death benefit as the Acommon-law widow@ of the employee, who was domiciled in Wisconsin when he died (August 31, 1997). The couple met while the employee was living in Wisconsin, and lived together as husband and wife in Minnesota from December 1977 to 1980, and then resided in Florida from 1980 to 1987, and again in Wisconsin from 1987 until the employee=s death in August 1997. During their purported marriage (part of this time they would have been Florida residents), they traveled through Georgia on trips to and from Minnesota, Wisconsin, and Florida .

ANALYSIS

Since the employee was domiciled in the State of Wisconsin at the time of his death, the law of Wisconsin regarding marriage applies. See section 216(h)(1)(A) of the Social Security Act, incorporated by section 2(d)(4) of the Railroad Retirement Act. Common-law marriage was abolished in Wisconsin in 1917. See, Wis. Stat. '765.04. However, Wisconsin will recognize a marriage which is valid where celebrated. See, Legal Opinion L-61-449. Thus, for the appellant to be recognized as the widow of the employee she must establish that she contracted a common-law marriage in a state which recognizes such marriages and to which the highest court of Wisconsin would defer.

In addition to Wisconsin, the appellant and employee resided in Minnesota and Florida and made

frequent visits to Georgia. Only common-law marriages contracted on or before April 26, 1941 are recognized as valid in Minnesota. Minn. Stat. '517.02. See also, Carlson v. Carlson, 256 N. W. 2d 249 (Minn. 1977). Further, Minnesota has held that common-law marriages cannot be consummated by Minnesota residents who temporarily visit in a state that allows common-law marriages. See Laikola v. Engineered Concrete, 277 N. W. 2d 653 (1979). Likewise, no common-law marriage entered into after January 1, 1968 in Florida is valid. Fla. Stat. '741.211. However, although Florida does not recognize common-law marriages entered into after 1968, Florida will respect common-law marriages entered into in a state which recognizes common-law marriage. See Anderson v. Anderson, 577 So. 2d 658 (Fla. 1991). In Georgia, common-law marriages are valid. Ga. Stat. '19-3-1. See also, Steed v. State, 56 S. E. 2d 171 (Ga. 1949).

In the case of In re Van Schaick=s Estate, 40 N. W. 2d 588 (Wis. 1950) the Supreme Court of Wisconsin held that AA woman living and cohabiting in [Wisconsin] with a man to whom she was not formally married did not enter into common-law marriage by living with him and holding herself out to the public as his wife during their summer vacations in Texas and was not entitled to letters of administration of, or any rights as his widow and heir, in his estate, in view of the provision of Wisconsin law invalidating foreign marriages prohibited by state law.@ See also, Lyannes v. Lyannes, 177 N.W. 683 (Wis. 1920) and Ginkowski v. Ginkowski, 137 N. W. 2d 403, (Wis. 1965), holding Amarriages out of state by Wisconsin residents to avoid legal impediments in Wisconsin are void.@

DECISION

Based on the above, it is our opinion that Wisconsin would not recognize any common-law marriage which may have arisen during the appellant=s brief overnight stays in Georgia with the employee while traveling to and from that state while the appellant and employee were residents of Wisconsin. Whether Florida or Minnesota would have recognized a common-law marriage contracted during a sojourn in Georgia while the appellant and employee were residents of these states is, in our view, controlling only if Wisconsin would give deference to this recognition. The employee in this case was domiciled in Wisconsin at the time of his death; therefore the law of his domiciliary (Wisconsin) will apply.

As we have seen above, Minnesota would not recognize a common-law marriage contracted during a brief visit to a common-law marriage state. Laikola, supra. Florida courts have reached the same result. See Edge v. Rynearson, 145 So. 180 (Fla. 1932), holding that mere sojourn, visit, or living together for a time will not support common-law marriage relation. See also, Le Blanc v. Yawn, 126 So. 789 (Fla. 1930).

We find the Florida case of Anderson, supra, to be distinguishable from the instant case. In that case the parties were residents of Georgia, which recognized common-law marriage, and the parties lived, cohabited, and held themselves out as husband and wife in Georgia , among other states, for almost 18 years. Thus, Florida, as would Wisconsin, gave recognition to this marriage, even though it would not be a valid marriage under its laws. In the instant case however, the

parties only briefly visited the State of Georgia, remaining overnight on several occasions during their travels to and from Wisconsin and Florida. Additionally, Florida has held that to Acohabit as man and wife@ does not contemplate the mere sojourn, visit, or temporary living together, but means to have the same habitation. Le Blanc, supra. Therefore, we find that based on these brief, overnight visits to Georgia, neither Florida or Minnesota would recognize as valid a common-law marriage contracted in Georgia during those visits. Ultimately, we find Wisconsin courts would not recognize a common-law marriage created by a brief sojourn to a common-law state.